

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JAN 31 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0130-PR
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
ROBERT LEE JENKINS,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-24578

Honorable Clark W. Munger, Judge

REVIEW GRANTED; RELIEF DENIED

Robert Lee Jenkins

Florence  
In Propria Persona

P E L A N D E R, Chief Judge.

¶1 Following a jury trial in 1988, petitioner Robert Jenkins was convicted of kidnapping, first-degree burglary, aggravated assault, and attempted sexual assault. He was sentenced to four terms of life imprisonment, three of which were consecutive. We affirmed Jenkins's convictions and sentences on appeal and denied relief on his petition for review of the denial of his first petition for post-conviction relief, filed pursuant to Rule 32, Ariz.

R. Crim. P., 17 A.R.S. *State v. Jenkins*, Nos. 2 CA-CR 91-0031, 2 CA-CR 91-0032-PR (consolidated) (memorandum decision filed Apr. 23, 1991). We denied relief on Jenkins’s petition for review of the trial court’s denial of his second post-conviction petition thirteen years later. *State v. Jenkins*, No. 2 CA-CR 2003-0124-PR (decision order filed July 26, 2004). The trial court summarily dismissed Jenkins’s third petition for post-conviction relief, in which he claimed he is entitled to sentencing relief under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and this petition for review followed. We will not disturb a trial court’s ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Jenkins argues that *Blakely* applies to his case because a judge, rather than a jury, found the existence of aggravating factors at sentencing. He contends his requested relief “is not a matter of retroactive application [of *Blakely*], but a matter of basic constitutional rights as intended by the framers.” We disagree. Relying on *State v. Febles*, 210 Ariz. 589, ¶ 7, 115 P.3d 629, 632 (App. 2005), the trial court correctly found that *Blakely* is not retroactively applicable to defendants whose convictions were final when *Blakely* was decided in June 2004. Jenkins’s case was final years earlier, this court having issued its mandate on his appeal in December 1991. Despite Jenkins’s attempt to characterize his claim as something other than one of retroactivity, that was the sole issue before the trial court and before us as well.

¶3 Jenkins is not entitled to relief under *Blakely*, and the trial court did not abuse its discretion by summarily dismissing his third petition for post-conviction relief. Therefore, although we grant the petition for review, we deny relief.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge